IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 960 OF 2005

M/s. Thanikkudam Bagawati Mills
Limited & Ors. .. Petitioners
V/s.
M/s. Shalibhadra Corporation & Ors. .. Respondents

Mr. Samsher Garud with Mr. Subhash Jadhav i/b. M/s. Khaitan & Jayakar for the Petitioners
Mr. Nitin Pradhan with Mr. Ravindra Sharma for the Respondent No. 2.
Mr. A.M. Shinganpurkar, APP. for the State.

CORAM : V.M. KANADE, J.
DATED : 29TH APRIL, 2005

P.C.:-

1. Heard the learned counsel for the Petitioners and the learned counsel for the Respondent No. 2. The Petitioners are challenging issuance of process by the Metropolitan Magistrate on a complaint filed by Respondent No. 2 under section 138 of the Negotiable Instruments Act.

2. The learned counsel appearing for the Petitioners has submitted that so far as Petitioner No. 5 is concerned, she has resigned on 25.7.2000, much before the cheque was issued and therefore, she is not liable to be prosecuted under section 138 of the Negotiable Instruments Act. The learned counsel appearing on behalf of the Respondent No. 2 on instructions from his client, who is present in Court, submits that this fact was not in fact known to the complainant and therefore the Petitioner No. 5 was impleaded as a party accused in the complaint. He, therefore submits that the

Petitioner No. 5 may be deleted as an accused from the complaint.

3. The learned counsel appearing for the Petitioners thereafter submitted that the present complaint has been filed after the cheque was returned and intimation by the bank was given by memo dated 2.5.2001. He submitted that the cheque was dated 10.10.2000 and it was valid only for a period of 6 months, i.e. upto 10.4.2001. He submitted that since the cheque was dishonoured on 2.5.2001, the cheque itself was not valid. He invited my attention to the bank memo, which is annexed to the Petition. He submitted that it is mentioned that the memo clearly shows that the cheque was out of date and, therefore it was dishonoured. He further submitted that apart from that it was apparent that the said cheque was deposited in the bank on number of occasions and after it was dishonoured on more than one occasions, the complaint had been filed after the last dishonour of cheque on 2.5.2001. He submitted that in view of the case in **Sadanandan Bhadran v. Madhavan Sunil Kumar AIR 1998 SC 3043,** there was no cause of action for filing complaint as the cause of action had arisen after the first dishonour of cheque.

4. It is not possible to accept the submission made by the learned counsel for the Petitioners. It is no doubt true that in the complaint, in paragraph 4, it is mentioned as the complainant came to know about the

dishonour of cheque, after the cheque was returned with memo dated 2.5.2001 was sent to the complainant. However, that does not mean that the cheque was presented in the bank after the period of validity was over, i.e. after 10.10.2001. The learned counsel for the complainant has submitted that the cheque has been presented on 3.4.2001 and there is an endorsement and stamp of the bank that it was presented on that date.

5. Thus, it is obvious that this question whether the cheque was deposited beyond the period of validity will have to be ascertained after the evidence is adduced in the Trial Court. Therefore, this submission made by the learned counsel for the Petitioners can not be accepted. So far as the last submission regarding the cause of action, which has arisen in respect of filing the complaint, the said submission also cannot be accepted. The ratio in **Sadanandan Bhadran's case (supra)** will not be applicable to the facts and circumstances of the present case. In the said case, the Supreme Court has observed that after the first dishonour of the cheque, if the complainant sends a statutory notice, then after the expiry of the period of 15 days, the cause of action would arise and if the cheque is again presented in the bank by the complainant, then the complainant would not have a right to file the complaint after the second default. The facts and circumstances of the present case are entirely different, hence the said submission is also not acceptable. Hence, the Petition is partly

allowed. The Petitioner No. 5 is deleted from the array of the accused in the complaint no. 2757/S/2002 pending in the Court of Additional Chief Metropolitan Magistrate 7th Court at Dadar. All other questions raised by the Petitioner in this Petition are kept open and the Trial Court shall decide these questions on it's own merits and in accordance with law.

6. It is, however, clarified that if an application is made for exemption on behalf of the other applicants 1 to 4, the same may be considered sympathetically and the presence of the accused will not be insisted upon, unless it is absolutely necessary.

7. The learned counsel for the Petitioners candidly states that the Petitioners will not dispute the identity and the Counsel shall represent them on each and every date and the plea may be recorded through their Advocates.

(V.M. KANADE, J.)